

Exhibit D

Rec'd
MAR 20 2013

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

JESSICA ESPARZA, et al.)	CASE NO. CV 13 798996
)	
Plaintiffs)	JUDGE KATHLEEN ANN SUTULA
)	
v.)	
)	
THOMAS GERALD KLOCKER, et al.)	<u>AMENDED COMPLAINT</u>
)	(Jury Demand Endorsed Hereon)
Defendants)	

FACTS COMMON TO ALL CAUSES OF ACTION

1. Plaintiff, Jessica Esparza is a U.S. citizen and resides in Westlake, Ohio.
2. Plaintiff, A Metal Source, LLC fka All Metal Source, LLC is an Ohio limited liability company with its principal place of business in Westlake, Ohio.
3. Defendant, All Metal Sales, Inc., is an Ohio corporation with its principal place of business located at 29260 Clemens Road, Suite #3, Westlake, Ohio 44145.
4. Defendant, Thomas Gerald Klocker is a U.S. citizen and resides in Rocky River, Ohio.
5. On or about September 2, 2010, Plaintiff(s) received a cease and desist letter addressed to Plaintiff, Jessica Esparza insisting that she cease and desist the use of the phrase "All Metal" in the name of her metal distributing business and asserted that Defendant, All Metal Sales, Inc. owned the right to the All Metal mark and that her use of the phrase "All Metal" was in violation of the Lanham Act, Ohio statutes and

common law; a copy of said letter is attached hereto and made a part hereof and further designated as Exhibit A.

6. On October 8, 2010, Plaintiff sent in a certificate of amendment to the Ohio Secretary of State changing her company name from All Metal Source, LLC to A Metal Source, LLC which was finalized by the State of Ohio on October 19, 2010; a copy of said amendment is attached hereto and made a part hereof and further designated as Exhibit B.

7. On or about October 14, 2010, Defendants filed an action against Plaintiffs in the United States District Court, Northern District of Ohio, Eastern Division which was assigned Case No. 1:10-CV-02343 (hereinafter referred to as "the underlying federal action") alleging various causes of action including unfair competition under the Lanham Act, 15 U.S.C. §1125(a)(1)(A); violation of the Ohio Deceptive Trade Practices Act, Ohio Rev. Code §4165.01 *et seq.*; unfair competition and unjust enrichment based upon Plaintiff's alleged infringement of Defendant's trademark "All Metal" and its logo.

8. Through the litigation process, Defendants became aware that Plaintiff has changed its corporate name from All Metal Source, LLC to A Metal Source, LLC, but refused to terminate the litigation.

9. During the underlying federal action, Defendants' counsel then began insisting and asserting that Defendant owned the right to the "A Metal" mark and the literal element "A" and that Plaintiff's use of the phrase, "A Metal" and the literal element "A" in the name of her metal distributing business was still in violation of the Lanham Act.

10. At the time Defendants filed the underlying federal action against Plaintiffs, there were 7 other companies registered in the State of Ohio that also used the words,

“All Metal” in their company name, yet Defendants only sued Plaintiffs for alleged causes of actions; a copy of a print-out from the Ohio Secretary of State’s website listing these companies is attached hereto and made a part hereof and further designated as Exhibit C.

11. In the underlying federal action, Defendants also alleged that Plaintiffs violated the Lanham Act and otherwise engaged in unfair competition by virtue of the fact that Plaintiffs advertised on “ThomasNet”, a widely used buying guide that reports names and descriptions of businesses that offer particular goods and services, in a manner that would confuse the two companies, yet there are currently over 50 companies in the United States which also use the term “All Metal” in their company names and the evidence will demonstrate at the time of filing there were many in existence then, too; a copy of a print-out from thomasNet.com is attached hereto and made a part hereof and further designated as Exhibit D.

12. On January 7, 2012, the jury returned a verdict in favor of Plaintiffs having answered “no” to all interrogatories proposed to the panel.

13. On January 9, 2012, the District Court entered judgment for the Plaintiffs herein on all counts brought in the underlying federal action and ordered Defendant to pay all costs; said order being designated ECF#67; a copy of which is attached hereto and made a part hereof and further designated as Exhibit E.

14. On February 6, 2012, Defendants filed a motion for Judgment as a Matter of Law or for a New Trial in the underlying federal action which was further designated on the federal court’s docket as DOC#71 and #71-1.

15. In the underlying federal action, Defendant, Thomas Gerald Klocker falsely stated that his business had a registered trademark with the State of Ohio since 1999 when, in fact, his business's State of Ohio Trademark Certificate is dated February 24, 2011, *four months after he instigated* the underlying federal litigation against Plaintiff; a copy of said certificate is attached hereto and made a part hereof and further designated as Exhibit F.

16. In the underlying federal action, Defendants claimed it/he had a federal trademark over the words "all metal", when in fact, it did not acquire a federal trademark until March 13, 2012, *two months* after the trial ended and this trademark does not contain the words, "**All Metal**" nor "**A Metal**"; a copy of Defendants' federal trademark Registration Certificate No. 4111084 is attached hereto and made a part hereof and further designated as Exhibit G.

17. In the underlying federal litigation, Defendant's father, Thomas Paul Klocker testified that Defendant, Thomas Gerald Klocker stated to him that he had already spent hundreds of thousands of dollar in another case regarding the color of tile to be installed in his home and that he was willing to spend that and more to make sure Plaintiffs' business failed; he also submitted a letter to Judge Donald C. Nugent in that case and which was documented as ECF#42 in that action stating the same.

18. On October 15, 2012, Defendant instigated yet another law suit against GKN Aerospace New England, Inc. assigned Case No. CV-12-793534 arising out of a transaction in 2007 and Defendant has also been involved in numerous legal cases in both state court and federal court which will be further evidenced at the trial of this matter.

FIRST CAUSE OF ACTION

(Frivolous Conduct/Vexatious Litigator)

19. Plaintiffs reaver and reallege each and every averment and allegation contained in Paragraphs 1 through 18 of this Complaint as if specifically rewritten herein and hereby incorporates the same by reference.

20. Plaintiffs further say that Defendant(s) have habitually, persistently and without reasonable grounds engaged in vexatious conduct in the underlying federal action and she believes in other actions as well which served to merely harass or maliciously injure her and/or others.

21. Plaintiffs further say that as a direct and proximate result of Defendants' frivolous conduct, she/it have been damaged and expects to incur further damages in the future.

WHEREFORE, Plaintiffs pray for judgment against Defendant on their First Cause of Action in a sum in excess of Twenty Five Thousand Dollars (\$25,000), an award of punitive damages, plus attorney's fees and costs, interest both pre-judgment and post-judgment, an order declaring Defendants to be vexatious litigators, and for such other and further relief as may be just and equitable in the premises.

SECOND CAUSE OF ACTION

(Unfair Competition)

22. Plaintiffs reaver and reallege each and every averment and allegation contained in Paragraphs 1 through 21 of the within Complaint as if specifically rewritten herein and hereby incorporates the same by reference.

23. Plaintiffs further say that Defendant(s)' real intention in instigating the underlying federal action against her/it was to destroy or attempt to destroy her/its ability to succeed as a new business in competition with Defendant(s) and that he/it used deliberate efforts with the sole aim of causing Plaintiffs to spend her/its income and other sources on litigating against a baseless law suit which constitute unfair competition as shall be more fully demonstrated at the trial of this matter or during dispositive motion practice, all in violation of common law and the Lanham Act.

24. Plaintiffs further say that as a direct and proximate cause of Defendant(s)' unfair competition, Plaintiffs have been damaged and expects to incur further damages in the future.

WHEREFORE, Plaintiffs pray for judgment against Defendant on their Second Cause of Action in a sum in excess of Twenty Five Thousand Dollars (\$25,000), an award of punitive damages, plus attorney's fees and costs, interest both pre-judgment and post-judgment, and for such other and further relief as may be just and equitable in the premises.

THIRD CAUSE OF ACTION

(Abuse of Process)

25. Plaintiffs reaver and reallege each and every averment and allegation contained in Paragraphs 1 through 24 of the within Complaint as if specifically rewritten herein and hereby incorporate the same herein by reference.

26. Plaintiffs further say that should the Court find that probable cause existed for Defendants to instigate the underlying federal action against her/it, that Defendants then perverted the proceeding to attempt to accomplish an ulterior purpose for which it

was not designed by prolonging the proceeding, gaining trade secrets and other proprietary information, draining Plaintiff(s) of financial and human resources, damaging Plaintiff(s)' reputation and standing within their common industry, and drawing customers away from Plaintiff, causing Plaintiffs damage thereby.

27. Plaintiffs further say that as a direct and proximate cause of Defendants abuse of process, it/she has been damaged and expects to incur further damages in the future.

WHEREFORE, Plaintiffs pray for judgment against Defendants on their Third Cause of Action in a sum in excess of Twenty Five Thousand Dollars (\$25,000), an award of punitive damages, plus attorney's fees and costs, interest both pre-judgment and post-judgment, and for such other and further relief as may be just and equitable in the premises.

FOURTH CAUSE OF ACTION

(Malicious Civil Prosecution)

28. Plaintiffs reaver and reallege each and every averment and allegation contained in Paragraphs 1 through 27 of their Complaint as if specifically rewritten herein and hereby incorporate the same by reference.

29. Plaintiffs further say that Defendants maliciously instigated the underlying federal action against them without probable cause to do so and that the proceedings terminated in their favor

30. Plaintiffs further say that as a direct and proximate cause of Defendant's malicious civil prosecution against them, they have been damaged and expect to incur further damages in the future.

WHEREFORE, Plaintiffs pray for judgment against Defendants on their Fourth Cause of Action in a sum in excess of Twenty Five Thousand Dollars (\$25,000), an award of punitive damages, plus attorney's fees and costs, interest both pre-judgment and post-judgment, and for such other and further relief as may be just and equitable in the premises.

FIFTH CAUSE OF ACTION

(Unjust Enrichment)

31. Plaintiffs reaver and reallege each and every averment and allegation contained in Paragraphs 1 through 30 of the within Complaint as if specifically rewritten herein and hereby incorporate the same by reference.

32. Plaintiffs further state that Defendant's wrongful acts described in this Complaint and including, but not limited to, the ill-gotten trade secrets and/or proprietary information have bestowed a benefit upon the Defendants for which it has not compensated the Plaintiffs.

33. Plaintiffs further state that as a direct and proximate cause of the unjust enrichment of Defendants, they have been damaged and expect to be further damages in the future.

WHEREFORE, Plaintiffs pray for judgment against Defendants on their Fifth Cause of Action in a sum in excess of Twenty Five Thousand Dollars (\$25,000), an award of punitive damages, plus attorney's fees and costs, interest both pre-judgment and post-judgment, and for such other and further relief as may be just and equitable in the premises.

SIXTH CAUSE OF ACTION

(Intentional Infliction of Emotional Distress)

34. Plaintiff, Jessica Esparza reavers and realleges each and every averment and allegation contained in Paragraphs 1 through 33 of the within Complaint as if specifically rewritten herein and hereby incorporates the same by reference.

35. Plaintiff, Jessica Esparza further states that Defendant, Thomas Gerald Klocker sued her in the underlying federal action with malicious and tortious intentions, concerted designs to further wrongful gains and other unlawful activity as described in this Complaint and that said conduct would be considered outrageous in a civilized community and that they intentionally inflicted emotional distress upon her.

36. Plaintiff, Jessica Esparza further states that as a direct and proximate cause of Defendant, Thomas Gerald Klocker's intentional infliction of emotional distress upon her, she has suffered sleeplessness, anxiety, stomach aches, depression, headaches, trauma, nightmares and fear due to threats Defendant, Thomas Gerald Klocker has made.

WHEREFORE, Plaintiffs pray for judgment against Defendants on her Sixth Cause of Action in a sum in excess of Twenty Five Thousand Dollars (\$25,000), an award of punitive damages, plus attorney's fees and costs, interest both pre-judgment and post-judgment, and for such other and further relief as may be just and equitable in the premises.

LANENE M. MESLAT CO., LPA

lanene m. meslat
LANENE M. MESLAT/0074450

Attorney for Plaintiffs
27070 Detroit Road, #102
Westlake, Ohio 44145
(440) 899-7405
Fax: (440) 360-7468

CERTIFICATE OF SERVICE

A copy of the foregoing Amended Complaint was forwarded by regular U.S. mail, postage pre-paid, to Thomas Gerald Klocker, at 908 Beach Road, Rocky River, Ohio 44116, and to All Metal Sales, Inc. c/o Thomas Gerald Klocker, Statutory Agent, at 29260 Clemens Road, Suite #3, Westlake, Ohio 44145, this 20th day of February, 2013.

lanene m. meslat
LANENE M. MESLAT
Attorney for Plaintiff

McDonald Hopkins

Attorneys at Law

Direct Dial: 216.430.2029
E-mail: deupar@mcdonaldhopkins.com

600 Superior Avenue, East
Suite 2100
Cleveland, Ohio 44114

• 216.348.5400
• 216.348.5474

September 2, 2010

Certified Mail Return Receipt Requested

Ms. Jessica Esparza
25935 Detroit Rd.
Westlake, OH 44145

Re: Unlawful Use of ALL METAL Trademark and Unfair Competition

Dear Ms. Esparza:

We represent All Metal Sales Inc. ("All Metal"). As you well know based on your personal experience, All Metal has successfully owned and used its All Metal mark in connection with the sale of its metal materials to customers for many years. The All Metal mark is of great value and importance to All Metal and its business.

Knowing the value of the All Metal mark and the success of All Metal's business, you have copied All Metal's mark and begun using it in the *identical* business as does All Metal. Specifically, we found that you are selling the same metal materials under the name All Metal Source, LLC, and use the All Metal mark throughout your website www.allmetalsource.com in connection with your business. Needless to say, but your copying of the All Metal trademark to enter the identical business selling the identical goods and services constitutes trademark infringement under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); a false designation of the original and false description under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); and false registers, traffic in, or use of a domain name or trade name containing another's mark with a bad faith intent to profit from that mark under Section 43(d) of the Lanham Act, 15 U.S.C. § 1125(d); and violates the Ohio trademark and dilution statutes and law of unfair competition and misappropriation.

Your unlawful use of the All Metal mark with your corporate name and in your advertising and business unfairly capitalizes on the goodwill and reputation embodied in All Metal's products, services, and business. Customers already have mistakenly believed that your use of the All Metal mark is somehow authorized or sponsored by us or is somehow affiliated with All Metal. This further evidences your significant and willful unlawful activities. Based on these violations, All Metal is entitled to monetary damages including lost profits, treble damages, attorneys' fees and costs, and injunctive relief.

2333333:

McDonald Hopkins
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www.mcdonaldhopkins.com

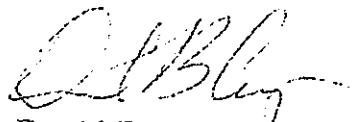
Ms. Jessica Esparza
September 2, 2010
Page 2

To ensure that you cease and desist of all unauthorized use of the All Metal marks or any marks confusingly similar to the All Metal marks on any corporate names, websites, products, advertisements, or in connection with any services, we request that you certify that:

- (1) you or any entity you are affiliated with or an agent of, immediately cease all use of All Metal or marks using All Metal or any domain name or mark confusingly similar to All Metal;
- (2) cease the use of all metal tag or other marker in your domain name or HTML source code using All Metal or anything confusingly similar to the All Metal mark; and
- (3) you or any entity you are affiliated with or an agent of, agree to cease any further corporate name, website use or advertising bearing the All Metal mark being a part thereof or any domain name, trade name, corporate name or mark confusingly similar to the All Metal mark.

Your signature on the line indicated below signifies your acceptance of the terms outlined in this letter. If we do not receive a full acceptance from you within seven (7) days of the date of this letter, we will proceed with all steps necessary to protect our client's goodwill in its goods and service marks and to stop your continued unlawful, willful infringement to confuse customers using the same mark for the same goods and services as All Metal.

Sincerely,



David B. Cupar

AGREED TO AND ACCEPTED BY:

By: _____

Name: _____

Title: _____

1233680

McDonald Hopkins



DATE: 10/22/2010	DOCUMENT ID: 201029400947	DESCRIPTION: AMEND/ARTICLES- ORGANIZATION/DOM. LLC (LAM)	FILING 50.00	EXPED .00	PENALTY .00	CERT .00	COPY .00
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Receipt
This is not a bill. Please do not remit payment.

A METAL SOURCE, LLC
25935 DETROIT ROAD
CLEVELAND, OH 44145

STATE OF OHIO
CERTIFICATE
Ohio Secretary of State, Jennifer Brunner

1894781

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

A METAL SOURCE, LLC

and, that said business records show the filing and recording of:

Document(s)

AMEND/ARTICLES-ORGANIZATION/DOM. LLC

Document No(s):
201029400947



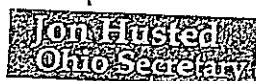
Witness my hand and the seal of
the Secretary of State at Columbus,
Ohio this 19th day of October, A.D.
2010.

Jennifer Brunner

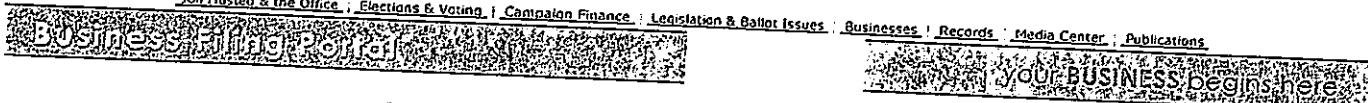
Ohio Secretary of State

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State of Ohio
Office of the Secretary of State

EXHIBIT B



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Business Search by Name

Entity Number	Business Name	Type	Original Filing Date	Next Due Date	Status	Business Location	County	State
1537866	ALL METAL RECYCLING, INC.	CORPORATION FOR PROFIT	04/22/2005	-	Active	BATAVIA	CLERMONT	OHIO
1110598	ALL METAL SALES, INC.	CORPORATION FOR PROFIT	09/13/1969	-	Active	WESTLAKE	CUYAHOGA	OHIO
527070	ALL METAL FABRICATORS INC.	CORPORATION FOR PROFIT	12/11/1973	-	Active	CLEVELAND	CUYAHOGA	OHIO
525178	DO ALL METAL FINISHING, INC.	CORPORATION FOR PROFIT	10/31/1970	-	Canceled	CLEVELAND	CUYAHOGA	OHIO
251416	ALL METAL PRODUCTS COMPANY	FOREIGN CORPORATION	12/07/1955	-	Canceled	-	CONVERSION	DELAWARE
216912	ALL METAL PRODUCTS COMPANY	FOREIGN CORPORATION	02/23/1959	-	Dead	-	CONVERSION	DELAWARE
111924	THE ALL METAL CASKET COMPANY	CORPORATION FOR PROFIT	09/16/1971	-	Canceled	MANSFIELD	PITCHLAND	OHIO

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Total Number of filings found : 7

[New Search](#)

EXHIBIT C

All Metal Specialties Inc - Jamestown, NY
Manufacturing, Fabrication & Assembly
Metal Fabrications

All Metal Stamping Inc - Abbotsford, VI
Manufacturing, Fabrication & Assembly
Manufacturer of builders' hardware.

All Metal Works - Kingston, WA
Manufacturing, Fabrication & Assembly
Manufacturer & custom manufacturer of metal products such as spacers, standoffs, shepherd game gambrels, & ornamental art products. Ornamental products include wine racks, pot-racks, commercial display racks, interior, & exterior railings. Capabilities include welding & fabrication, custom design work, machining or fabrication of machine components. Applications include ornamental, commercial, residential, & marine.

All Metal Fabrication Company - Glendale, AZ
Manufacturing, Custom Manufacturing, Service Company
Metal Fabrication Services Including Design & Manufacture Of Custom Packaged For Power Generators, Pumping Units & Fuel Tanks.

All Metal Machine & Tool Co - Macedonia, OH
Manufacturing, Custom Manufacturer, Service Company
CNC & General Machinery

All Metal Manufacturing Services Inc - Calgary, AB
Custom Manufacturer

All Metal Welding & Fabrication, Inc - Hinsdale, IL
Custom Manufacturer, Service Company
Manufacturer of steel fabrications service

All Metal Welding/Fabrication - Hinsdale, IL
Manufacturing, Custom Manufacturing, Service Company
Structural Metal & Iron Fabricating, Arc & Friction Welding

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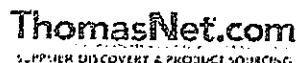
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Company Name Results

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Apache All Metal Building - Jourdanton, TX
Manufacturing, Service Company
Manufacturer Of Metal Buildings; Delivery Service

Do All Metal Fabricating Ltd. - Eslevan, SK
Custom Manufacturer

Mil-All Metal Treating - Gastonia, NC
Defense Company
Heat Treating Service

Ran/All Metal Technology - Hooksett, NH
Manufacturer, Custom Manufacturer, Service Company
Precision Sheet Metal Fabricators

Rohnert Park All Metal - Rohnert Park, CA
Custom Manufacturer, Service Company
Production machining, steel fabrication & welding services for marine, 4x4, motorcycle & restaurant industry.

All Metals Industries, Inc. - Locations
Manufacturer

Metal service center for aluminum, carbon steel & stainless steel providing cutting, shaping, machining & finishing of steel sheets, blanks, coils, plates, bars & shapes. Aluminum alloys include 2024, 6061, 6063, 7075, 1100, 3003, 5005, 5052, 5083, 5086, 5454 & 5456 grades. Stainless steel includes 304, 304L, 316, 316L, 409, 430 grades. Carbon steel available in commercial, drawing, high carbon, special killed (AKDQ), low carbon (15 max), A-36, 44W, Grade 50 & special grades.
www.allmetind.com

Treat All Metals, Inc. - Milwaukee, WI
Metal Manufacturer, Service Company
ISO 9001:2008 certified metal heat treating services from -120 degrees F to +2200 degrees F temperature for parts up to 9 ft. Capabilities include hardening, gas carburizing, carbonitriding, nitriding, quenching, normalizing, annealing, straightening, shot blasting, sub zero treatment, stress relieving & inspection. Suitable for various industries including automotive, defense, industrial, marine, mining, paper, plastic, racing, wind power & transportation. On-time delivery.

All Metals Fabricating, Inc. - Allen, TX

Sheet metal fabricating services. Capabilities include laser cutting, bending, punching, machining, milling, welding, polishing, sanding, deburring & finishing. Products include strappers, conveyors, frames, faceplates, mounts, carriage assemblies & automotive bumpers.
Brand Names: Bystar, Bystronic

All Metals Engineering - Huntington Beach, CA
Engineering, Custom Manufacturer
Distributor Of Bars, Rods, Sheet, Plate, Strip, Pipe, Tubing, Forgings

All Metals Fabricating Co., Inc. - Youngwood, PA
Manufacturer, Custom Manufacturer
Manufacturer Of Metal Fabricators

All Metals Fabrication - Ogden, UT
Manufacturing, Custom Metal Fabrication
Manufacturer & Service Company Offering Stainless Steel Design & Fabrication Services.

All Metals Fabricators, Inc. - Wilmington DE
Manufacturer, Custom Manufacturer, Service Company
Manufacturer of precision, CNC machining service

All Metals Incorporated - Adrian, MI
Manufacturer
Steel service center.

All Metals Incorporated - Adrian, MI
Sheet Metal
Distributor Of Steel, Aluminum, Stainless & Brass Products.

All Metals Processing Co. - Burbank, CA
Service Company
Magnetic Inspection Service

All Metals Processing Co., Inc. - Stanton, CA
Manufacturing, Service Company
NADCAP certified metal finishing & inspection services. Finishing processes performed include anodizing, painting, dry film coating, powder coating & plating. Anodizing services such as chemical film treatment, chromic acid anodizing, sulfuric acid anodizing & hard anodizing are available. Non-destructive (NDT) testing services include magnetic particle inspection, penetrant testing, nitral etching, hardness testing, conductivity testing, cleaning & etching. Capabilities also include bead blasting, sand blasting, coating weight testing, copper sulfate testing, high humidity testing, masking, salt spray testing, & water immersion testing. Markets served include aerospace, military & defense.

All Metals Supply Inc. - Oroville, CA
Sheet Metal
Distributor Of Ferrous & Non-Ferrous Metals, Plastic & Ind. Hardware

All-Metal Fabricators, Inc. - Cleveland, OH
Metal Fabrication, Custom Manufacturer

All Metals & Forge Group, LLC - Fairfield, NJ
Supplier, Manufacturer, Custom Manufacturer

All Metals & Forge Group is your ISO9001:2008/AS9100 REV B/EN9100 Registered Forging Manufacturer and Steel Service Center. AMFG specializes in Specialty Steels, Alloy Steels, Carbon Steels, Aluminum Alloys, Stainless Steels (200,300,400,500 series), PH Grades, Nickel Alloys, Titanium Alloys, Tool Steels, and Super Alloys. All of the Discs, Shafts, Flanged Shafts, Long Shafts, Step Shafts, Cylinders, Blind Cylinders, and Hubs (weight capacity approx. up to 75,000#/34,000 kgs. AMFG prides itself with sheet, strip and plate. The value added services include, cutting, laser cutting, heat treating, machining, rolling and welding. Our corporate goal is to have competitive prices, reliable deliveries and above all, a sales team that is helpful, courteous and professional to meet our client partners requirements.

All Metals Machine & Tool - Macedonia, OH
Machine, Manufacturing, Service Company
Machine Work Service

All Metals Market East - Valley, NE
Distributor
Distributor Of Steel Service Centers

All Metals Service & Warehouse - Spartanburg, SC
Manufacturing Company
metal Slitting Service

All Metals Service & Warehousing - Cartersville, GA
Manufacturing Company
Warehousing & Steel Service Centers

All-Metal Machine Specialties, Ltd. - Concord, ON
Manufacturer
Drum Brake Shoes Only, I.M. Disc Brakes

Southern All Metals Recycling, Inc - Bay St. Louis, MS
Manufacturing Company
Recycling Service

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Company Name Results

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All Metals Fabricators & Millwright Service - Elizabethton, TN
Manufacturer, Service Company
CNC & Precision Machine Work, Welding Services

All Metals Product Development By Engineered Shapes - Garfield, NJ
Manufacturer, Custom Manufacturer, Service Company
Manufacturer Of Castings, Forgings; Machining & Assembly Service

Hall Metal Corp. - Fort Pierce, FL
Distributor, Manufacturer
Manufacturer Of Structural Steel; Distributor Of Iron & Steel Bars & Rods

Randall Metals Corp. - Salisbury, NC
Manufacturer, Custom Manufacturer
ISO 9001:2000 registered steel service center specializing in the processing of tight-tolerance, flat-rolled steel products for automotive, consumer & commercial markets. Cutting specifications include gauge thicknesses from 0.006 to 0.085, widths from 0.375 to 59.750, 1 to 30 cuts & tolerances of plus/minus 0.002. Materials include tin plate, tin coated sheet, cold rolled mild steel, hot rolled pickled & oiled mild steel, galvanized, stainless steel & electrical steel.

Randall Metals Corp. - East Chicago, IN
Manufacturer, Custom Manufacturer
ISO 9001:2000 registered steel service center specializing in the processing of tight-tolerance, flat-rolled steel products for automotive, consumer & commercial markets. Cutting specifications include gauge thicknesses from 0.006 to 0.085, widths from 0.375 to 59.750, 1 to 30 cuts & tolerances of plus/minus 0.002. Materials include tin plate, tin coated sheet, cold rolled mild steel, hot rolled pickled & oiled mild steel, galvanized, stainless steel & electrical steel.

Ball Metal Container Corp. - Conroe, TX
Manufacturer
Manufacturing Of Aluminum Cans

Ball Metal Container Corp. - Kent, WA
Manufacturer
Manufacturer Of Aluminum

Marshall Metal Products, Inc. - Marshall, MI
Distributor, Manufacturer, Custom Manufacturer
Manufacture Small & Medium Custom Metal Stampings In Low & High Carbon Steel, Stainless Steel, Aluminum & Brass, Presses Range From 10 To 250 Tons; Also Produce Bright Zinc Plated, Unplated, Low-Carbon Stainless Steel, All-Purpose Tube Clamps For 1/8" To 7/8" OD Single & Multiple Tube Lines, Prototypes, Welding & Assembly Available. Serve Variety Of Industries Including: Recreation Vehicles & Equipment, Brakes & Trailer Controls, OEM Engine Component, Automotive, Home Appliances, & Industrial Equipment

Randall Metals Corporation - Elk Grove Village, IL
Manufacturer, Custom Manufacturer, Service Company
ISO 9001:2000 registered steel service center specializing in the processing of tight-tolerance, flat-rolled steel products for automotive, consumer & commercial markets. Cutting specifications include gauge thicknesses from 0.006 to 0.085, widths from 0.375 to 59.750, 1 to 30 cuts & tolerances of plus/minus 0.002. Materials include tin plate, tin coated sheet, cold rolled mild steel, hot rolled pickled & oiled mild steel, galvanized, stainless steel & electrical steel

Skyball Metal Craft, Inc. - Los Angeles, CA
Manufacturer, Custom Manufacturer
Manufacturer Of Steel Fabrications

Ball Metal Beverage Container - Torrance, CA
Manufacturer
Manufacturer of aluminum cans.

Ball Metal Beverage Container - Milwaukee, WI
Manufacturer
Manufacturer of aluminum cans.

Ball Metal Container Group - Fairfield, CA
Manufacturer
Manufacturing Of Aluminum Cans

Certified Weldall Metals Propeller & Mfg. Ltd. - Edmonton, AB
Custom Manufacturer

Sun Air Div., Stegall Metal Industries - Birmingham, AL
Manufacturer
Commercial Kitchen Hood & Ventilation Systems, Power Ventilators

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ALL METAL SALES, INC.,)	CASE NO. 1:10 CV 2343
)	JUDGE DONALD C. NUGENT
Plaintiff,)	
)	
v.)	JUDGMENT
ALL METAL SOURCE, LLC,)	
Defendant.)	

The above-captioned case came before this Court for a trial by jury. At the conclusion of the trial, the Jury returned unanimous Answers to Interrogatories in favor of Defendant, All Metal Source, LLC.

In its Complaint, Plaintiff All Metal Sales, Inc., asserted claims of unfair competition under the Lanham Act, 15 U.S.C. § 1125(a)(1)A); violation of the Ohio Deceptive Trade Practices Act, Ohio Rev. Code § 4165.01 et. seq.; unfair competition; and unjust enrichment all based upon Defendant's alleged infringement of Plaintiff's trademark "All Metal" and its A Logo

The trial commenced on January 4, 2012. A Jury of twelve was duly impaneled and sworn pursuant to Fed. R. Civ. P. 39(c)(1). Opening statements of counsel were made. Plaintiff called the following witness(es): (1) Jim Vandevelde; (2) Ancillia Garcia-Coolidge by video depositon; (3) Christopher Ciccarello; (4) Jessica Maria Esparza. Plaintiff rested. The Court reserved ruling on Defenant's Rule 50 motion. The Defendant called the following witness(es): (1) Jaine Anne Wirtjes; (2) Thomas P. Klocker; and (3) Jessica Esparza. Court was then

adjourned until January 5, 2012 at 8:15 a.m.

The trial continued on January 5, 2012. The Defendant called the following witness(es): (4) Professor Jeffrey Samuels (taken out of order); (3) Jessica Esparza, continued. The Defendant rested. Plaintiff rested. The Court gave initial jury instructions. Closing arguments of counsel were made and the Court gave final instructions. Thereafter, the Jury retired to deliberate. The Jury, in open court, returned the following unanimous Answers to Interrogatories:

INTERROGATORY NUMBER 1

Do you find that Plaintiff All Metal Sales, Inc. proved by a preponderance of the evidence that Defendant's use of "All Metal Source, LLC" infringed on Plaintiff's "All Metal" trademark in violation of the Lanham Act?

NO (insert in ink "YES" or "NO" according to your findings)

INTERROGATORY NUMBER 2

Do you find that Plaintiff All Metal Sales, Inc. proved by a preponderance of the evidence that Defendant's use of "All Metal Source, LLC" willfully infringed Plaintiff's "All Metal" trademark in violation of the Lanham Act?

NO (insert in ink "YES" or "NO" according to your findings)

INTERROGATORY NUMBER 3

Do you find that Plaintiff All Metal Sales, Inc. proved by a preponderance of the evidence that Defendant's use of "A Metal Source, LLC" infringed Plaintiff's "All Metal" trademark in violation of the Lanham Act?

NO (insert in ink "YES" or "NO" according to your findings)

INTERROGATORY NUMBER 4

Do you find that Plaintiff All Metal Sales, Inc. proved by a preponderance of the evidence that Defendant's use of "A Metal Source, LLC" willfully infringed Plaintiff's "All Metal" trademark in violation of the Lanham Act?

NO (insert in ink "YES" or "NO" according to your findings)

INTERROGATORY NUMBER 5

Do you find that Plaintiff All Metal Sales, Inc. proved by a preponderance of the evidence that Defendant's use of "All Metal Source, LLC" infringed Plaintiff's A Logo in violation of the Lanham Act?

NO (insert in ink "YES" or "NO" according to your findings)

INTERROGATORY NUMBER 6

Do you find that Plaintiff All Metal Sales, Inc. proved by a preponderance of the evidence that Defendant's use of "All Metal Source, LLC" willfully infringed Plaintiff's A Logo in violation of the Lanham Act?

NO (insert in ink "YES" or "NO" according to your findings)

INTERROGATORY NUMBER 7

Do you find that Plaintiff All Metal Sales, Inc. proved by a preponderance of the evidence that Defendant's use of "A Metal Source, LLC" infringed Plaintiff's A Logo in violation of the Lanham Act?

NO (insert in ink "YES" or "NO" according to your findings)

INTERROGATORY NUMBER 8

Do you find that Plaintiff All Metal Sales, Inc. proved by a preponderance of the evidence that Defendant's use of "A Metal Source, LLC" willfully infringed Plaintiff's A Logo in violation of the Lanham Act?

NO _____ (insert in ink "YES" or "NO" according to your findings)

INTERROGATORY NUMBER 9

Do you find that Plaintiff All Metal Sales, Inc. proved by a preponderance of the evidence that Plaintiff's "All Metal" trademark was infringed by cyberpiracy in violation of the Lanham Act by Defendant's use of the domain name "AllMetalSource.com"?

NO _____ (insert in ink "YES" or "NO" according to your findings)

INTERROGATORY NUMBER 10

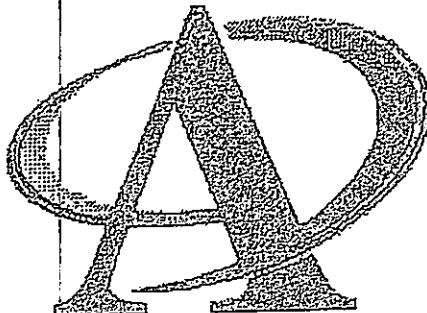
Do you find that Plaintiff All Metal Sales, Inc. proved by a preponderance of the evidence that Plaintiff's "All Metal" trademark was infringed by cyberpiracy in violation of the Lanham Act by Defendant's use of the domain name "AMetalSource.com"?

NO _____ (insert in ink "YES" or "NO" according to your findings)

The Court read the Interrogatory Answers in open court, and thereafter, the Court polled the Jury. Each Juror affirmatively responded to the correctness of the Answers. The Court accepted the Interrogatory Answers and the Jury was then discharged.

THEREFORE, based upon the Interrogatory Answers, the Court enters Judgment

United States of America
United States Patent and Trademark Office



Reg. No. 4,111,084

ALL METAL SALES, INC. (OHIO CORPORATION)

29260 CLEMENS ROAD

Registered Mar. 13, 2012 WESTLAKE, OH 44145

Int. Cls.: 6 and 40

FOR: NON-STANDARD AND CUSTOM-MADE ITEMS MADE FROM HIGHLY SPECIALIZED NON-STANDARD METAL MATERIAL, NAMELY, METAL IN THE FORM OF FLAT BARS, HOLLOW BARS, RECTANGULAR BARS, ROUND BARS, HEXAGON BARS, SQUARE BARS, HALF ROUND BARS, COILS, PLATES, TUBES, SHEETS, STRIPS, PIPES, STRUCTURAL BEAMS, WIRE, FOIL, STRIPS, STRUCTURAL CHANNELS, STRUCTURAL TEES, STRUCTURAL ANGLES, STRUCTURAL RAILS, RINGS, AND CUSTOMER-SPECIFIED SHAPES, ALL FOR FURTHER MANUFACTURE: METAL BOLTS; METAL SCREWS; AND METAL SHIM STOCK, IN CLASS 6 (U.S. CLS. 2, 12, 13, 14, 23, 25 AND 50).

TRADEMARK

FIRST USE 9-30-1999; IN COMMERCE 9-30-1999.

SERVICE MARK

FOR: MANUFACTURING TO THE ORDER AND SPECIFICATION OF OTHERS OF NON-STANDARD AND CUSTOM-MADE ITEMS MADE FROM HIGHLY SPECIALIZED NON-STANDARD METAL MATERIAL, NAMELY, METAL, IN THE FORM OF FLAT BARS, HOLLOW BARS, RECTANGULAR BARS, ROUND BARS, HEXAGON BARS, SQUARE BARS, HALF ROUND BARS, COILS, PLATES, TUBES, SHEETS, STRIPS, PIPES, STRUCTURAL BEAMS, WIRE, FOIL, STRIPS, STRUCTURAL CHANNELS, STRUCTURAL TEES, STRUCTURAL ANGLES, STRUCTURAL RAILS, RINGS, AND CUSTOMER-SPECIFIED SHAPES, ALL FOR FURTHER MANUFACTURE: METAL BOLTS; METAL SCREWS; AND METAL SHIM STOCK, IN CLASS 40 (U.S. CLS. 100, 103 AND 106).

PRINCIPAL REGISTER

FIRST USE 9-30-1999; IN COMMERCE 9-30-1999.

THE STIPPLING IS FOR SHADING PURPOSES ONLY.

THE MARK CONSISTS OF THE LETTER "A" STYLIZED WITH A SWIRL AROUND THE LETTER "A".

SER. NO. 85-243,378, FILED 2-16-2011.

ANDREW RHIM, EXAMINING ATTORNEY



Director of the United States Patent and Trademark Office

EXHIBIT G

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